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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,384	07/31/2003	Werner Plass	5367-226RCE	9553
7590 03/21/2007				
Thomas Langer, Esq. Cohen, Pontani, Lieberman & Pavane 551 Fifth Avenue, Suite 1210 New York, NY 10176				
			EXAMINER	
			SEFER, AHMED N	
			ART UNIT	PAPER NUMBER
			2826	
			MAIL DATE	DELIVERY MODE
			03/21/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/631,384

Applicant(s)

PLASS ET AL.

Examiner

A. Sefer

Art Unit

2826

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☒ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-9 and 15.
Claim(s) withdrawn from consideration: 10-14.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 3. NOTE: The proposed new limitation(s) in claim 15 requires further consideration and /or search because at first glance, the phrase "wherein to end at least one of said side faces forms an angle between 40 and 50 degrees," makes no sense. To attempt to make sense of this phrase requires further consideration.

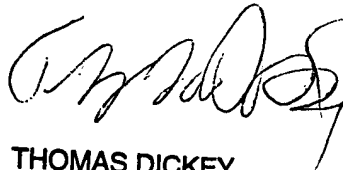
Continuation of 11: Applicant argues that:

Kinoshita does not teach or suggest side faces disposed perpendicularly with respect to the radiation exit face. Further, Kinoshita actually teaches away from having side faces disposed perpendicularly with respect to the radiation face. Specifically, in paragraph 0043, Kinoshita states: 'In surface emitting lasers, in general, side surfaces perpendicular to the waveguide direction of the laser light may cause useless and undesirable resonance. To overcome this problem, the invention proposes various types of construction not making vertical side surfaces.' Moreover, in paragraph 0056, Kinoshita states 'side surfaces 60' of the device including edges of the active layer 3 and the waveguide layer 5 are configured to slant relative to the major surface of the substrate 1...With this slant facet structure, undesirable horizontal resonance by reflection from edges can be restricted.' Therefore, Kinoshita explicitly teaches away from using perpendicular side surfaces as this would result in undesirable horizontal resonance. In view of Kinoshita's explicitly teaching away from using perpendicular side surfaces, Applicants submit that the combination of Kinoshita and Shveykin is improper.

However, Kinoshita discloses that it is conventional that the side surface of the active layer be perpendicular to the top surface of the active layer (paragraph 12 and figs. 7A and 7B). Kinoshita provides clear evidence that one having skill in the art, at the time of the invention, would have expected the side faces to be disposed perpendicularly with respect to the radiation exit face, because as Kinoshita clearly teaches, this arrangement was conventional at the time of the invention.

Attachment(s):

The IDS (PTO-1449) submitted 2/27/2007 is being considered.



THOMAS DICKEY
PRIMARY PATENT EXAMINER